

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Criminal Appeal No.182-DB of 1999
Date of decision: 27.02.2008

Gurpal Singh @ Kirpal Singh and others.

-----Appellants.

Vs.

State of Punjab.

-----Respondent.

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE S. D. ANAND**

Present: Mrs. H.K. Dhillon. Advocate
for the appellants.

Mr. Rajesh Bhardwaj, DAG, Punjab.

Adarsh Kumar Goel, J.

The appellants Gurpal Singh @ Kirpal Singh, Ranjit Kaur @ Mohindo and Jasbir Kaur @ Taro challenge their conviction under Sections 302/34 IPC for which they have been, inter-alia, sentenced to undergo life imprisonment.

Case of the prosecution is that the deceased Avtar Singh brother of PW-1 Swaran Singh and nephew of PW-2 Surjit Singh had visited the house of the appellants on 29.12.1995 at 12-30 P.M. with a view to persuade appellant No.1 Gurpal Singh @ Kirpal Singh to reconcile his differences with his wife Chhinder

Pal Kaur, daughter of Surjit Singh. On seeing them, appellant No.1 got infuriated and remarked abusively as to why the beggars had come to their house. They were penniless and had not given anything in the marriage. This remark led to an altercation. Appellant No.1 asked his mother Ranjit Kaur to get him a kirch (knife), so that he could teach a lesson to the complainant. Appellant Jasbir Kaur @ Taro, sister of appellant No.1 caught hold of hair of the deceased Avtar Singh from back side and appellant No.1 gave two blows, one on the chest and one on the left arm. Ranjit Kaur picked up khilpar (piece of wood) to hit Surjit Singh, which accidentally hit Taro. The accused then fled away from the place of occurrence with their weapons. Avtar Singh was taken to the Civil Hospital, where he breathed his last. Swaran Singh PW-1 proceeded to inform the police and met Inspector Joginder Singh PW-10, who recorded his statement at 3-30 P.M., which led to registration of FIR. PW-10 Joginder Singh went to the hospital, prepared inquest report and sent a request for post-mortem of the dead body. He then visited the place of occurrence, prepared rough site plan and recovered bloodstained earth. He arrested appellant Nos.1 and 2 on 10.1.1996. He also recovered one kirch in pursuance of disclosure-statement of appellant No.1 Gural Singh @ Kirpal Singh. Appellant No.3 Jasbir Kaur was arrested on 21.2.1996. After completing investigation, the accused were challaned.

The prosecution examined Swaran Singh PW-1, Surjit Singh PW-2, Dr. S.K. Gupta PW-3, Sukhwinder Singh, Draftsman PW-4, Constable Ajit Singh PW-5, H.K. Singla PW-6, Constable Nishan Singh PW-7, Dr. Harinder Sharma PW-8, Constable Satwant Singh PW-9, Inspector Joginder Singh PW-10 and MHC Devinder Singh PW-11.

The accused denied the prosecution allegations. Jasbir Kaur appellant No.3 stated that Chhinder Pal Kaur did not want to live jointly with the family of appellant Gural Singh @ Kirpal Singh who was the only son of his parents. On the date of occurrence, the deceased came to the house of the accused with a lathi and abused appellant No.1. He was accompanied by four young persons. Since appellant No.1 refused to accept the demand for separate living, the deceased opened attack with his lathi on appellant No.1. Jasbir Kaur intervened and received injuries. Appellant No.1 picked up the kirch lying nearby and wielded the same to save her, on account of which, Avtar Singh fell down and his companions ran away. Appellant No.2 Ranjit Kaur was not present at the place of occurrence. Appellant No.1 also gave similar version.

After considering the evidence on record, the trial Court accepted the case of the prosecution and convicted and sentenced the appellants.

We have heard learned counsel for the parties and perused the record.

Contention raised on behalf of the appellants is that PW-1 Swaran Singh belonged to Village Jatpura while PW-2 Surjit Singh was from Village Kamalpura and thus, they could not have gone together to the house of the appellants which was in Village Lama. The deceased had gone with four other persons armed with lathi and had opened attack and appellant No.1 had to wield kirch blow in his self-defence and thus, did not commit any offence. Alternatively, he exceeded right of private defence and thus, case fell under Section 304-I IPC. It was also submitted that Ranjit Kaur was given the role of handing over weapon to Kirpal Singh and Jasbir Kaur @ Taro was given the role of catching hold of hair of the deceased, which could have been given to falsely implicate them in view of strained relations between the parties. Alternatively, it was also submitted that Ranjit Kaur and Jasbir Kaur did not share common intention of appellant No.1 and they will be responsible only for their individual acts.

After giving due consideration to the contentions raised, we consider it appropriate to give benefit of doubt to Ranjit Kaur @ Mohindo and Jasbir Kaur @ Taro, but we do not find any merit in the case of appellant No.1 Gurpal Singh @ Kirpal Singh, for the reasons that follow.

PW-1 Swaran Singh is brother of the deceased. His version is that Surjit Singh PW-2, his maternal uncle, came to his house and narrated the harassment faced by his daughter Chhinder Pal Kaur, who was married to appellant No.1. He sought

his help to visit the house of the accused/appellant No.1 to talk to him. PW-1 Swaran Singh agreed to do so and accompanied him alongwith his mother and brother. When they went to the house of the accused, appellant No.1 started abusing them, which led to an altercation and the accused assaulted Avtar Singh in the manner already described by him in his statement Ex.PA.

Version given by the said witness is quite natural and reliable. There is nothing abnormal in his maternal uncle visiting his house and seeking his help for rehabilitating his daughter. It was natural for PW-1 Swaran Singh and the deceased to have accompanied PW-2 Surjit Singh to talk to the accused, being a close relation and being concerned about rehabilitation of daughter of PW-2 Surjit Singh. Version given by PW-1 Swaran Singh finds full corroboration in the testimony of PW-2 Surjit Singh.

PW-3 Dr.S.K. Gupta also corroborates the version of PW-1 Swaran Singh and PW-2 Surjit Singh about the manner of assault, whose observations are as under:-

“I found following injuries:-

1. An incised penetrating wound (stab wound) was present on anterior aspect of left side of chest 6 cm below and lateral to nipple in 6th inter costal space. Incised wound on skin surface measured 1.4 cm x 0.4 cm. It was directed obliquely backward towards midline and its depth measured 15 cm. Corresponding cuts was present on shirt etc.

Dissection of thorax revealed that 6th intercostal space, muscles, underlying preura, lung of left side and left ventricle with pericardial sac were penetrated along the tract of wound. Left pleural cavity was full of blood and heart was empty due to leakage of blood from penetrating wound.

2. An incised penetrating wound (stab wound) was present on the lateral aspect of left loin. Surface wound measuring 1.3 cm x 0.3 cm and it was directed backward towards midline. It was 10 cm deep and has penetrating abdominal muscles only. Corresponding cut was present on shirt and sweater. Dissection of abdomen revealed that its viscera was healthy and stomach contained 6 ounces of semi digested food material.
3. An incised perforating wound was present on left upper arm (3). Entrance wound measured 1.4 cm x 0.4 cm was present. 20 cm. below tip of left shoulder.
4. Exit wound measured 0.8 cm x 0.2 cm was present 15 cm below arm pit. Edges of exit wound were inverted and entry wound are everted due to withdrawal of weapon.
Corresponding cut was present on shirt.
Dissection revealed that wound had penetrating upper arm muscle only.

In my opinion, the death was due to haemorrhagic shock as a result of injury No.1. All the injuries were ante mortem in nature. Such injury as No.1 was sufficient to cause death in the ordinary course of nature.”

He also deposed that the injuries were possible with kirch Ex.P1.

The appellant No.1 has not denied causing of stab-wounds found on the deceased. His plea is of private defence, to save Taro who had been caused injuries. It may be noted that PW-6 Dr. H.K. Singla had examined the appellant Taro and found following injuries:-

- “1. Lacerated wound 3 cm x 0.25 cm x muscle deep on left side of scalp about 6.5 cm from mid line and about 6.5 cm above the part of left eye brow. Bleeding was present, there was swelling for about 1 cm around the wound, x-ray was advised.
2. Abraded bruise 1.75 cm x 0.6 cm on back of right hand near the knuckle of metacarpophalangeal joint of ring finger of right hand oozing was present movement of right ring finger was painful.
3. Complained of pain in left upper gluteal region but no external injury was detected.”

The said witness further deposed that the injury could have been suffered by a wooden khilpar.

The main question for consideration is whether any right of private defence accrued to Gurpal Singh @ Kirpal Singh and if so, to what extent?

Burden of proving existence of right of private defence is on the accused. He can discharge such burden by referring to

the circumstances in the prosecution evidence itself. The version has to be reasonable and probable and can be proved by preponderance of probabilities. Such a burden is not as onerous as burden on the prosecution to prove its case beyond reasonable doubt. Proof of injuries is not a safe criteria for determining who was the aggressor.

Where evidence of prosecution is clear and cogent, absence of satisfactory explanation for injury on the accused may not by itself probabilise the version of private defence. The entire incident has to be examined with care and viewed in its proper setting. Right of private defence accrues on the basis of a reasonable apprehension of danger to the person or the property. A person apprehending danger of death or bodily injury, cannot weigh the same in golden scales and may be justified to use force. The said right does not extend to causing more harm than necessary for defence.

These principles are well settled and have been reiterated in **State of Madhya Pradesh v. Ramesh** AIR 2005 SC 1186.

In the present case, there is no material to show that PW-1 Swaran Singh, PW-2 Surjit Singh and the deceased had any weapon. Injuries on the person of Jasbir Kaur @ Taro have been duly explained to have been caused accidentally with the khilpar (a piece of wood). The complainant party had gone with a view to rehabilitate Chhinder Kaur and not with a view to assault the

accused. If their intention would have been to assault the accused, they could have carried more serious and more number of weapons. They would also have assaulted in such a way as not to leave any opportunity to the accused to acquire a weapon. The plea of private defence is not, thus, established, even on preponderance of probabilities. The accused has not discharged the burden of proving the said plea.

The accused did not, thus, have the right of private defence and there was no question of exceeding the same. The accused has caused at least two stab wounds, as shown by the medical evidence, causing almost instantaneous death. The offence clearly falls under Section 302 IPC.

We may now discuss the case of Ranjit Kaur and Jasbir Kaur. Admittedly, there was no premeditated attack. The complainant party had visited the house of the accused. There was an altercation. Appellant Gurbal Singh @ Kirpal Singh was infuriated. Ranjit Kaur and Jasbir Kaur had no intention to cause death. They did not share common intention to cause death. Their individual acts do not clearly bring out sharing of common intention of causing death. Role attributed to Jasbir Kaur is of catching hold of hair of Avtar Singh and role attributed to Ranjit Kaur is of handing over of knife. Evidence of such a role has to be clinching and in the circumstances where occurrence takes place suddenly, it may not be always safe to infer common intention from such

evidence. We, thus, consider it safe to give benefit of doubt to Ranjit Kaur and Jasbir Kaur.

Accordingly, the appeal filed by Ranjit Kaur @ Mohindo and Jasbir Kaur @ Taro is allowed and they are acquitted, while appeal filed by Gurpal Singh @ Kirpal Singh is dismissed and his conviction and sentence are affirmed.

**(ADARSH KUMAR GOEL)
JUDGE**

February 27, 2008
ashwani

**(S. D. ANAND)
JUDGE**